

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

Served: August 2, 1991

FAA Order No. 91-32

In the Matter of:)
)
)

RICHARD A. BARGEN)
_____))

Docket No. CP90WP0183

ORDER GRANTING RECONSIDERATION

Respondent seeks reconsideration of FAA Order No. 91-20, served on June 4, 1991, by which his notice of appeal was dismissed because, contrary to 14 C.F.R. § 13.233(c) (1991),^{1/} he had failed to file an appeal brief. Complainant has filed a reply in which Complainant states that it does not object to Respondent's request for reconsideration. As explained below, Respondent's request for reconsideration is granted, and his appeal brief must be filed with the Federal Aviation Administration's (FAA) Appellate Docket Clerk within 30 days from the date of service of this decision.

^{1/} Section 13.233(c) of the Rules of Practice provides in pertinent part:

Perfecting an appeal. Unless otherwise agreed by the parties, a party shall perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the FAA decisionmaker.

14 C.F.R. § 13.233(c) (1991).

The history of this case is as follows. Respondent's appeal brief was due on April 1, 1991. On March 22, 1991, Respondent mailed a request for extension of time in which to perfect his appeal, but rather than sending the request to the Appellate Docket Clerk, FAA, in Washington, DC, he sent it to the United States Department of Labor, Office of Hearings, in San Francisco, California. The latter address is the address of the law judge who presided over the hearing in this matter. When Respondent failed to file his appeal brief, his appeal was dismissed pursuant to 14 C.F.R. § 13.233(d)(2) (1991)^{2/} because the FAA Appellate Docket Clerk never received the incorrectly addressed request for extension of time.

The Rules of Practice in FAA Civil Penalty Actions provide that the parties may agree to extend the time for the filing of appellate briefs. 14 C.F.R. §§ 13.233(c)(1) & (e)(1) (1991). If the parties do not agree, the party seeking the extension of time may file a written motion with the Administrator. 14 C.F.R. §§ 13.233(c)(2) & (e)(2) (1991). Whether or not the parties agree, the time period within which

^{2/} Section 13.233(d)(2) of the Rules of Practice provides:

The FAA decisionmaker may dismiss an appeal, on the FAA decisionmaker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief with the FAA decisionmaker.

14 C.F.R. § 13.233(d)(2) (1991).

the brief must be filed is not extended until a request or motion for extension of time is granted by the Administrator or his delegate. The request or motion for extension of time should be transmitted to the Administrator through the Appellate Docket Clerk at the following address: FAA, 800 Independence Avenue, SW, Room 924A, Washington, DC, 20591. In the Matter of Gabbert, FAA Order No. 90-27 at 5-6 (October 11, 1990); 14 C.F.R. § 13.233 (1991).

When Respondent allowed the due date for the filing of the appeal brief to pass, Respondent ran the risk of having his appeal dismissed for failure to perfect. As has been warned previously, "[p]arties should be aware of the fact that the mere filing of a request for an extension of time in which to file a brief does not automatically stay a filing deadline." In the Matter of Thunderbird Accessories, Inc., FAA Order No. 89-8 at 4, n. 5 (December 22, 1989).

Nonetheless, Respondent's motion for reconsideration is granted. Although ignorance of the Rules of Practice should not be condoned, I am reluctant to enforce the procedural rules in a case such as this one in which the provisions of the Rules have been made murky by supplemental instructions issued by a law judge. On April 27, 1990, the Chief Administrative Law Judge instructed the parties through a Notice of Assignment of Proceeding that he was the law judge who would be hearing this matter, and that in the future, all pleadings and other communications should be directed to him, as well as to the other parties on the attached service list.

This service list included the address of the FAA Hearing Docket.^{3/} Subsequently, the Chief Administrative Law Judge, in a Notice of Reassignment of Proceeding, dated September 6, 1990, informed the parties that "[a]ll future pleadings and other communications regarding this case shall be served on Judge Lasky, at the U.S. Department of Labor, Room 600, 211 Main Street, San Francisco, California 94105." This Notice of Reassignment of Proceeding, unlike the earlier Assignment of Proceedings, did not mention the necessity of serving the other parties and the FAA Hearing Docket.^{4/}

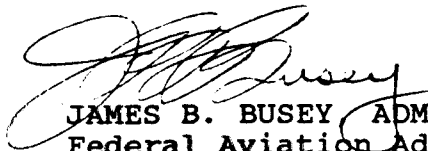
Respondent's appeal brief is due within 30 days of the service date of this decision. Respondent must file the original and two copies of the appeal brief with the FAA Appellate Docket Clerk. In addition, Respondent must serve a copy of the appeal brief on the current agency counsel of record, Peter J. Lynch, Manager, Enforcement Proceedings Branch, AGC-250, FAA, 800 Independence Avenue, SW, Washington, DC 20591. See 14 C.F.R. § 13.233(d) (1991). No further extensions of time to file the appeal brief will be granted.

^{3/} The address and room number of the Hearing Docket and the Appellate Docket are the same.

^{4/} It would be helpful to respondents if it was stated in any Notice of Assignment or Reassignment of Proceedings that the law judge's particular address be used only while the case is pending before that law judge, and that the FAA Hearing Docket must always be served with copies of all pleadings and other correspondence.

THEREFORE, IT IS ORDERED THAT:

1. Respondent's motion for reconsideration is granted, and FAA Order No. 91-20 is hereby rescinded;
2. Respondent's appeal brief is due to be filed 30 days from the date of service of this decision; and
3. Respondent must serve a copy of the appeal brief upon the agency counsel.


JAMES B. BUSEY ADMINISTRATOR
Federal Aviation Administration

Issued this 1st day of August, 1991.